



INTERIOR BOARD OF INDIAN APPEALS

Estate of Edward (Agopetah) Bert

12 IBIA 253 (05/22/1984)

Also published at 91 Interior Decisions 235

Overruled:

32 IBIA 108



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF EDWARD (AGOPETAH) BERT

IBIA 84-16

Decided May 22, 1984

Appeal from an order denying reopening issued by Administrative Law Judge Sam E. Taylor in IP OK 183 P 83, H-239-66.

Vacated and remanded.

1. Indian Probate: Reopening: Generally--Indian Tribes: Membership

When reopening of a closed Indian estate is sought for the sole purpose of determining the appellant's nationality or Indian status, and no alteration in the distribution of the decedent's estate is sought, reopening will be allowed under 43 CFR 4.206 without regard to the restrictions set forth in 43 CFR 4.242 and in previous decisions of the Board of Indian Appeals interpreting that regulation.

APPEARANCES: Pat Cockrill, Esq., Yakima, Washington, for appellant; Mary Alice Bert Agopetah Washington, pro se. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On January 27, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Eddie L. Tahsequah (appellant). Appellant sought

review of a November 21, 1983, order issued by Administrative Law Judge Sam E. Taylor denying reopening of the estate of Edward (Agopetah) Bert (decedent). Probate of decedent's Indian trust estate was concluded on November 30, 1966, with the issuance of an order determining his heirs. Appellant was not found to be an heir of decedent.

Appellant seeks to reopen the estate in order to show that decedent was his father. Appellant does not seek to alter the distribution of decedent's estate, but only to establish his own correct blood quantum.

Reopening was denied on the grounds that appellant had failed to show due diligence in pursuing this matter. The due diligence requirement derives from the Board's interpretation of the reopening regulations set forth in 43 CFR 4.242. See, e.g., Estate of Joseph Wyatt, 11 IBIA 244 (1983).

Judge Taylor properly denied reopening on the basis of the precedents before him. However, the Judge was not aware that the Board had considered a related question in another case. In that case, reopening of a closed probate estate was sought in order to redetermine appellants' nationality. In the course of probating the estates of four of the appellants' relatives, the Department had found that appellants were Canadian nationals and, therefore, not persons to whom the United States owed a trust responsibility. The appellants sought reopening for the limited purpose of establishing their nationality, and did not want to alter the distribution of any estate. After preliminary briefing, the Board decided that nationality was a fundamental right, ordered reopening of the estate under the provisions of 43 CFR 4.206

for the limited purpose of redetermining appellants' nationality, and remanded the case to an Administrative Law Judge for an evidentiary hearing and recommenced decision solely on the question of nationality. In re Status of Gladys Rose Charles Whims, Docket No. IBIA 83-22-A, orders of June 20 and November 9, 1983.

Section 4.206 states:

In cases where the right and duty of the Government to hold property in trust depends thereon, administrative law judges shall determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of United States citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated (a) in current probate proceedings or (b) in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242.

[1] The Government's right and duty to hold property in trust for an individual may depend upon whether that individual has Indian status under the enrollment rules adopted by his or her tribe. Such status may, in turn, depend upon the individual's Indian blood quantum, often as determined as a result of probate proceedings. Like nationality, Indian status is a fundamental right. When reopening of a closed Indian estate is sought for the sole purpose of determining nationality or Indian status, and not for the purpose of altering the distribution of the decedent's estate, the Board holds that reopening should be permitted under 43 CFR 4.206 without regard to the restrictions set forth in 43 CFR 4.242 and in previous Board decisions interpreting that regulation. Those restrictions are intended to permit the finality of administrative determinations of the status of property, not to foreclose consideration of fundamental issues relating to personal status.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 21, 1983, order denying reopening of decedent's estate is vacated. Reopening of decedent's estate is ordered for the sole purpose of considering whether appellant can establish that decedent was his father, and for no other purpose. The case is remanded to the Administrative Law Judge for this determination. The decision of the Administrative Law Judge shall be final unless it is properly appealed under the provisions of 43 CFR 4.241 and 4.320.

//original signed
Bernard V. Parrette
Chief Administrative Judge

We concur:

//original signed
Jerry Muskrat
Administrative Judge

//original signed
Anne Poindexter Lewis
Administrative Judge